"56. Where a person is prosecuted for an offence under section 35 or section 36 or any of the provisions of this Part of this Ordinance relating to the maximum speed at which motor vehicles may be driven, he shall not be convicted unless within fourteen days of the commission of the offence —

(a) a summons for the offence was served on him; or

(b) a notice in writing of the intended prosecution, specifying the nature of the alleged offence and the time and place where it is alleged to have been committed, was served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence:

Provided that —

(i) failure to comply with this requirement shall not be a bar to the conviction of the accused in any case where the court is satisfied that —

(a) neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time for a summons to be served or for a notice to be served or sent as aforesaid; or

(b) the accused by his own conduct contributed to such failure; and

(ii) the requirements of this section shall in every case be deemed to have been complied with unless and until the contrary is proved:

Provided further that this section shall not apply in any case in which the person prosecuted was, in connection with the incident in respect of which a charge against such person is preferred, arrested either on the day on which such incident occurred or within fourteen days of such date."

At no stage of the case did the respondent or any of his witnesses state that he had not received a notice in writing of the intended prosecution within 14 days of the commission of the offence or at any other time. There was nothing to show on the evidence whether or not a notice had been sent to him in due time and accordingly by virtue of the provisions of Proviso (ii) the section should have been deemed to have been complied with.

This being the case and the Magistrate in his Grounds of Judgment having expressed his view that the facts disclosed the commission of an offence under section 36(1) of the Ordinance, with which view I agreed, I allowed the appeal, quashed the order of acquittal and substituted therefor a conviction under section 36(1) of the Road Traffic Ordinance, 1958, and sentenced the accused to pay a fine of $100 in default three weeks' imprisonment and ordered his licence to be endorsed.

The provisions of section 56 of the Ordinance are substantially similar to the provisions of section 21 of the Road Traffic Act, 1930.

In *Sandland* v. *Neale*[1] at p. 573 Lord Goddard stated:

"The object of the section is, of course, plain; it is to let the offender know promptly that he may be prosecuted so that he may be able to collect material for his defence while the matter is fresh in his memory and that of potential witnesses; so the sooner the notice is given, the better".

Although Proviso (ii) to section 56 of the Ordinance places the onus of showing that this section has not been complied with upon the person being prosecuted it is none the less important that the provisions of sub-section (b) of the section (in the vast majority of cases it will be the question of a notice and not of a summons) are strictly complied with by the Police not only as to specifying in the Notice the nature of the alleged offence and the time and place where it is alleged to have been committed but also as to service of the Notice either personally or by sending by registered post. (As to the nature of the alleged offence, see *Milner* v. *Allen*,[2] and *Venn* v. *Morgan*.[3] As to the time and place where the offence is alleged to have been committed, see *Pope* v. *Clarke* [4]).

If service is to be effected by registered post, whether or not the defendant receives the notice within fourteen days is immaterial; the section requires the notice to be sent within that time; it says nothing about receipt for the obvious reason that the person to whom it is sent may be away from home when the letter is delivered. It is necessary, however, that in effecting service in this manner the Police should act reasonably (see the observations of Lord Goddard C.J. in *Sandland* v. *Neale, supra; Stanley* v. *Thomas*[5]; *Holt* v. *Dyson* [6]).

Appeal allowed.

IDRIS v. PUBLIC PROSECUTOR

[C. A. (Hill Ag. C.J., Good and Hepworth JJ.) August 3, 1960]

[Penang — Criminal Appeal No. 11 of 1960]

Criminal law — Murder — Circumstantial evidence — Submission of no case to meet — Procedure.

Circumstantial evidence should be such that when you look at all the surrounding circumstances, you find such a series of undesigned, unexpected coincidences that, as a reasonable person, you find your judgment is compelled to one conclusion. If the circumstantial evidence is such as to fall short of that standard, if it does not satisfy that test, if it leaves gaps then it is of no use at all. In this case the circumstantial evidence pointed conclusively to the accused's guilt.

An example of a case where procedure adopted of addresses and summing up to the jury was quite inappropriate and incorrect.

Procedure for the defence in criminal trial before the High Court to submit, at the close of the case for the prosecution, that there is no case to go to jury illustrated in the judgment of Terrell J. in *R.* v. *Koh Soon Poh*[1] approved.

Case referred to:—

(1) *R.* v. *Koh Soon Poh* [1935] M.L.J. 120.

COURT OF APPEAL (CRIMINAL).

A. Jayadeva for the appellant.

J. P. Kirby (Deputy Public Prosecutor) for the respondent.

Hill Ag. C.J.: We dismissed this appeal on 11th July, 1960, and indicated that we would state our reasons for doing so at a later date.

The appellant was convicted and sentenced to death for the murder on 25th August, 1959, of Ku Bedah binti Ku Hassan at Kampong Kodiang Lama in the State of Kedah. The dead woman was the appellant's ex-wife.

Except for certain evidence with regard to motive the case for the prosecution consisted

entirely of circumstantial evidence and the gravamen of the appeal is that the verdict of the jury was perverse in that no reasonable jury if properly directed would have found the appellant guilty.

At the conclusion of the case for the prosecution appellant's counsel submitted that no *prima facie* case had been made out against the appellant which if unrebutted would warrant his conviction. At this stage of the trial the record shows that defence counsel addressed the jury "under section 214(iii) of the Criminal Procedure Code" (sic), that the Deputy Public Prosecutor replied and that the learned trial Judge gave a direction to the jury which was in the nature of a summing-up.

Section 214 of the Criminal Procedure Code is as follows:—

"214. (i) When the case for the prosecution is concluded the Court, if it considers that there is no evidence that the accused committed the offence shall direct the jury to return a verdict of not guilty.

(ii) If the Court considers that there is evidence that the accused committed the offence the Court shall call on the accused to enter on his defence.

(iii) The jury may return a verdict of not guilty either unanimously or by a majority at any time after the conclusion of the evidence for the prosecution if they consider the case to be one in which they could not safely convict."

It is clear that the procedure adopted of addresses and summing-up to the jury was quite inappropriate and incorrect. In the case of *R.* v. *Koh Soon Poh*[1] the Court of Criminal Appeal dealt with the procedure in submitting no case to meet at the close of the case of the prosecution. Terrell J., in giving the judgment of the Court, said, after referring to this section:—

"It is, of course, proper for counsel for the defence in any criminal trial before the Supreme Court to submit, at the close of the case for the prosecution, that there is no case to go to the jury. Such a submission is made to the Judge alone, counsel for the defence is entitled to address the Judge on the submission, and counsel for the Crown is entitled to be heard. The trial Judge will use his discretion as to whether he could request the jury to retire while the matter is being argued. If the trial Judge accepts the submission of counsel for the defence he will direct the jury to return a verdict of "not guilty" under subsection (1) above, otherwise he will call on the accused to enter on his defence as required by subsection (2). It will be observed that the language of sub-section (2) is peremptory.

Now as to sub-section (3): Even though a submission under sub-section (1) has been made and rejected, it is still open to counsel for the defence to submit that the Judge should inform the jury of their powers under sub-section (3). In the opinion of this Court such a submission should be limited to a request to the Judge that he should draw the attention of the jury to the provisions of sub-section (3) In our view counsel has no right at this stage to address the jury direct as to whether or not they should exercise their powers under that sub-section.

As to what course the trial Judge should pursue when this submission is made to him, it is difficult, if not impossible, to lay down any hard and fast rules, as much will depend on the circumstances of each particular case. It must be borne in mind that the Judge will already have come to the conclusion that there is a case to meet and will have called on the defence. It is possible, therefore, that he may decline to read the sub-section in question to the jury, and clearly there is no definite obligation upon him to do so. On the other hand, if the case for the prosecution is not strong he may think it right to call the attention of the jury to their powers, but if he does so he should at the same time express his opinion that there is some evidence against the accused."

We entirely agree with the above judgment, but in the present case we feel satisfied that not only was no injustice done to the appellant, but indeed the addresses and direction operated in his favour in that he was in reality afforded thereby two chances of acquittal. We are of opinion that there was sufficient evidence against the appellant for the learned trial Judge to have called for a defence with or without referring the jury to section 214(iii).

The evidence regarding motive indicated that the appellant frequently gambled and that he has pestered the deceased for money and had threatened her.

In his summing-up the learned trial Judge dealt comprehensively with all the evidence. He was careful to warn the jury that they were not bound to follow any opinion he might express. In his remarks to them at the end of the prosecution case he had this to say:—

"With regard to the definition of circumstantial evidence I can give you no better definition than quote to you the words of Lord Cairns in the case of *Belhaven & Stenton Peerage* reported in 1875-6 Appeal Cases, page 279:

'My Lords, in dealing with circumstantial evidence we have to consider the weight which is to be given to the united force of all the circumstances put together. You may have a ray of light so feeble that by itself it will do little to elucidate a dark corner. But on the other hand you may have a number of rays, each of them insufficient, but all converging and brought to bear upon the same point, and when united, producing a body of illumination which will clear away the darkness which you are endeavouring to dispel.'

In other words circumstantial evidence consists of this: that when you look at all the surrounding circumstances, you find such a series of undesigned, unexpected coincidences that, as a reasonable person, you find your judgment is compelled to one conclusion. If the circumstantial evidence is such as to fall short of that standard, if it does not satisfy that test, if it leaves gaps then it is of no use at all." As I have stated this case depends entirely upon circumstantial evidence."

The learned trial Judge dealt fully in his summing-up with the onus of proof and with the principle of reasonable doubt and we feel that the jury could have been in no doubt how they should properly consider and arrive at their verdict and we could find no grounds for saying that their final verdict was unreasonable.

If the pertinent prosecution witnesses were believed, and the jury must have believed them, there was a series of circumstances and coincidences which in our opinion when considered in the aggregate pointed conclusively to the accused's guilt. His denials, his attempt to establish an *alibi* and his weak explanations should not in our opinion have raised in the minds of the jury any reasonable doubt of which they could have given him the benefit.

It was for the above reasons that after careful consideration we dismissed this appeal.

Appeal dismissed.

Solicitors: *Jayadeva & Zahir.*